

New Directions for Juvenile Justice*

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I. INTRODUCTION

Over the past twelve years there has been increasing scrutiny of the ways in which society deals with young people, especially those who violate its norms. Calls for comprehensive changes have been issued by the courts,¹ national organizations,² child advocacy groups,³ and national and state commissions.⁴ Although changes affecting the treatment of young people in our nation have been recommended in many areas, those relating

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1. *E.g.*, *Kremens v. Bartley*, 431 U.S. 119 (1977); *Breed v. Jones*, 421 U.S. 519 (1975); *Gross v. Lopez*, 419 U.S. 565 (1975); *In re Winship*, 397 U.S. 358 (1970); *Tinker v. Des Moines School District*, 393 U.S. 503 (1969); *In re Gault*, 387 U.S. 1 (1967); *Kent v. United States*, 383 U.S. 541 (1966).

2. *E.g.*, R. KOBETZ & B. BOSARGE, *JUVENILE JUSTICE ADMINISTRATION*, 218 (1973); NATIONAL ASSOCIATION OF COUNTIES, *JUVENILE JUSTICE AND DELINQUENCY PREVENTION PLATFORM* § 3.65 (1976); AMERICAN LEGION NATIONAL EXECUTIVE COMMITTEE, *RESOLUTION NO. 43 REMOVAL OF STATUS OFFENSES FROM JUVENILE COURT JURISDICTION* (1975); National Council on Crime and Delinquency, *Jurisdiction over Status Offenders Should Be Removed from the Juvenile Court: A Policy Statement*, 21 *CRIME & DELINQUENCY* 97 (1975).

3. *E.g.*, CHILDREN'S DEFENSE FUND, *CHILDREN OUT OF SCHOOL IN AMERICA* (1974); AMERICAN CIVIL LIBERTIES UNION *JUVENILE RIGHTS PROJECTS*, *POSITION PAPER ON STATUS OFFENDERS* (1975); THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT § 3148 and § 821, *HEARINGS BEFORE THE SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY OF THE COMM. ON THE JUDICIARY, UNITED STATES SENATE*, 92d Cong., 2d Sess., 93d Cong., 1st Sess. 443-50 (1972-1973) (remarks of Flora Rothman, National Board of National Council of Jewish Women); *id.* at 179-81 (remarks of the National Board of YMCAs); E. SCHUR, *RADICAL NONINTERVENTION* (1973); K. WOODEN, *WEeping IN THE PLAYTIME OF OTHERS: AMERICA'S INCARCERATED CHILDREN* (1976); Wald, *Pretrial Detention for Juveniles*, in *PURSuing JUSTICE FOR THE CHILD* 119 (M. Rosenheim ed. 1976).

4. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE [hereinafter cited as PCLEAJ], *TASK FORCE REPORT: JUVENILE DELINQUENCY AND YOUTH CRIME* (1967); WHITE HOUSE CONFERENCE ON CHILDREN, *REPORT TO THE PRESIDENT* (1970); NATIONAL ADVISORY COMMITTEE ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION [hereinafter cited as NACJJDP]; *REPORT OF THE ADVISORY COMMITTEE TO THE ADMINISTRATOR ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE: SEPTEMBER 30, 1976* (1976); NACJJDP, *REPORT OF THE ADVISORY COMMITTEE TO THE ADMINISTRATOR ON STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE: March 30, 1977* (Advance Draft 1977); NATIONAL ADVISORY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS [hereinafter cited as NACCJSG], *REPORT OF THE TASK FORCE ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION* (1976); INSTITUTE OF JUDICIAL ADMINISTRATION-AMERICAN BAR ASSOCIATION, *JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS FOR JUVENILE JUSTICE: A SUMMARY AND ANALYSIS* (1977) [hereinafter cited as IJA-ABA STANDARDS]; [OHIO] ATTORNEY GENERAL'S JUVENILE JUSTICE TASK FORCE, *JUSTICE FOR OUR CHILDREN* (1976) [hereinafter cited as OHIO TASK FORCE REPORT]; WISCONSIN COUNCIL ON CRIMINAL JUSTICE SPECIAL STUDY COMMITTEE ON CRIMINAL JUSTICE STANDARDS AND GOALS, *JUVENILE JUSTICE STANDARDS AND GOALS* (1975); GOVERNOR'S ADULT AND JUVENILE JUSTICE ADVISORY COMMITTEE, *2 STANDARDS AND GOALS FOR THE NEW JERSEY CRIMINAL JUSTICE SYSTEM* (Final Draft 1977).

to juvenile justice have been focused to a great extent on three sets of issues: the rights and procedures applicable to youths in juvenile court proceedings; the rights and policies which should apply to juvenile correctional programs; and the deinstitutionalization of non-offenders.⁵ This article will explore the nature and scope of the examinations of these three aspects of the juvenile justice process at the national and state levels, and summarize recent efforts by a number of states to respond to the problems which have been raised.

II. CALLS FOR CHANGE—A NATIONAL PERSPECTIVE

A. *Juvenile Court Procedure*

In a series of relatively recent cases, the United States Supreme Court has closely scrutinized the juvenile court process and found it lacking. *Kent v. United States*⁶ was the first of these decisions; indeed, it was the Court's first review of the fundamental fairness of juvenile court adjudications since the first juvenile court was established in 1899.⁷ The issue in *Kent* was the applicability of due process requirements to a juvenile court's decision to waive its jurisdiction over a youth and permit a case to be transferred to a court having jurisdiction over adults accused of committing a criminal offense. On statutory grounds, the Court held that there must be a hearing which "measure[s] up to the essentials of due process and fair treatment," and that a child's counsel must have access to social records which could be considered by the juvenile court in making its decision.⁸

Kent was followed a year later by the landmark decision of *In re Gault*,⁹ in which the Supreme Court held that in any delinquency proceeding in which juveniles are in danger of losing their liberty through commitment by the juvenile court, the due process clause of the fourteenth amendment requires that they be afforded the right to counsel, the right to confront and cross-examine under oath the witnesses against them, and the privilege against self-incrimination.¹⁰ Although the decision decreed a sharp departure from the practices employed in the particular juvenile court which had adjudicated Gerald Gault, and in most other juvenile

5. The term nonoffenders encompasses juveniles alleged or adjudicated to be neglected, dependent, or abused, as well as juveniles alleged or adjudicated to have engaged in a "status offense." "Status offenses" involve conduct which is unlawful for juveniles but not for adults such as running away, truancy, or being "beyond parental control," "incorrigible," or "in need of supervision." See Juvenile Justice and Delinquency Prevention Act of 1974, § 223(a)(12), 42 U.S.C. § 5633(a)(12) (Supp. V 1975), as amended by Juvenile Justice Amendments of 1977, Pub. L. No. 95-115, § 4(c)(7), 91 Stat. 1048 (1977); COUNCIL OF STATE GOVERNMENTS, STATUS OFFENDERS: A WORKING DEFINITION (1975).

6. 383 U.S. 541 (1966).

7. M. PAULSEN & C. WHITEBREAD, JUVENILE LAW AND PROCEDURE, 12-13 (1974).

8. 383 U.S. at 562.

9. 387 U.S. 1 (1967).

10. *Id.* at 34-57.

courts around the country, the Supreme Court saw no inconsistency between introducing due process protections into juvenile court proceedings and the *parens patriae* philosophy which underlay the establishment of separate juvenile courts. In *Gault*, Mr. Justice Fortas, speaking for the Court, observed that

[w]hile due process requirements will, in some instances, introduce a degree of order and regularity to Juvenile Court proceeding to determine delinquency, and in contested cases will introduce some elements of the adversary system, nothing will require that the conception of the kindly juvenile judge be replaced by its opposite. . . .¹¹

This effort to "strike a judicious balance"¹² in determining what constitutes the "essentials of due process and fair treatment"¹³ is evident in the three other Supreme Court reviews of juvenile court procedures. In the decision of *In re Winship*,¹⁴ the majority of the Court concluded "that the observance of the standard of proof beyond a reasonable doubt will not compel the States to abandon or displace any of the substantive benefits of the juvenile process."¹⁵ In *Breed v. Jones*,¹⁶ which applied the protection against double jeopardy to delinquency proceedings in juvenile court, Mr. Chief Justice Burger, speaking for a unanimous Court, again stressed that

giving respondent the constitutional protection against multiple trials in this context will [not] diminish flexibility and informality to the extent that those qualities relate uniquely to the goals of the juvenile-court system.¹⁷

While the Supreme Court has expressed continuing doubts regarding the efficacy of the juvenile justice process,¹⁸ it has been reluctant to extend its "constitutional domestication"¹⁹ of the juvenile court to matters which would require fundamental changes. Thus, in *McKeiver v. Pennsylvania*,²⁰ it declined to extend the right to a trial by jury to delinquency proceedings, and in other cases it has declined to consider whether judicially operated intake services violate the right to a trial by an impartial finder of fact,²¹ or whether New York's and California's status offense statutes were void for vagueness.²²

11. *Id.* at 27.

12. *Commonwealth v. Johnson*, 211 Pa. Super. Ct. 62, 74, 234 A.2d 9, 15 (1967).

13. 383 U.S. at 562, (*quoted in* 387 U.S. at 30).

14. 397 U.S. 358 (1970).

15. 387 U.S. at 21, (*quoted in* 397 U.S. at 367).

16. 421 U.S. 519 (1975).

17. *Id.* at 535.

18. *McKeiver v. Pennsylvania*, 403 U.S. 528, 543-57 (1971); *In re Gault*, 387 U.S. 1, 17-19 (1967); *Kent v. United States*, 383 U.S. 541, 555-56 (1966).

19. 387 U.S. at 22.

20. 403 U.S. 528 (1971).

21. *In re Pima County Anonymous*, 110 Ariz. 98, 515 P.2d 600 (1973), *cert. denied*, 417 U.S. 939 (1974).

22. *Mercado v. Rockefeller*, 502 F.2d 666 (2d Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

The examination of juvenile court procedure has also been undertaken by a number of national standards-setting groups.²³ These efforts have attempted to define and recommend ways of implementing the rights mandated by the Supreme Court,²⁴ by suggesting additional safeguards which should be applied,²⁵ and have explored alternative means for handling matters which now ordinarily come before the juvenile court.²⁶

B. *Corrections and Treatment*

Scrutiny of the detention and correction components of the juvenile justice process has also yielded the question whether due process protections are being provided within the context of the rehabilitation rationale of the juvenile justice system. Attention has been focused primarily on the disciplinary procedures used in juvenile detention and correctional facilities; the question has been asked whether the physical condition, staffing patterns, programs and procedures of those facilities permit the individualized care and treatment that is the premise for maintaining a separate system of juvenile justice. In *Nelson v. Heyne*,²⁷ for example, one federal district court ruled that

—corporal punishment (in the form of beating juveniles with a “thick board”) violates the eighth amendment proscription against cruel and unusual punishment;²⁸

—administration of tranquilizing drugs for control purposes without specific authorization by a physician violates a juvenile’s right to due process and right against cruel and unusual punishment;²⁹

—juveniles are entitled to notice of institutional rules and sanctions;³⁰

—before juveniles can be placed in isolation, there must be notice of the alleged violation, a hearing before an impartial fact-finder at which they are entitled to confront their accusers and present evidence in their defense, and a written record of the disposition (in a form “sufficient to permit an administrative review”) which demonstrates that isolation for a given period of time meets “the best treatment interests” of the child involved;³¹

23. See generally authorities cited at note 4 *supra*.

24. See, e.g., IJA-ABA STANDARDS, COUNSEL FOR PRIVATE PARTIES *supra* note 4; NACCJSG, *supra* note 4, at 16; NACJJD, *supra* note 4, at STANDARDS 3.132, 3.134.

25. See, e.g., IJA-ABA STANDARDS, PRETRIAL COURT PROCEEDINGS, *supra* note 4; IJA-ABA STANDARDS, ADJUDICATION, *supra* note 4; IJA-ABA STANDARDS, APPEALS AND COLLATERAL REVIEW, *supra* note 4; NACCJSG, *supra* note 4, at chs. 12, 13; NACJJD, *supra* note 4, at STANDARDS 3, 165, 3.172.

26. See, e.g., IJA-ABA STANDARDS, NONCRIMINAL MISBEHAVIOR, *supra* note 4; IJA-ABA STANDARDS, POLICE HANDLING OF JUVENILE PROBLEMS, *supra* note 4; IJA-ABA STANDARDS, YOUTH SERVICE AGENCIES, *supra* note 4; NACCJSG, *supra* note 4, at ch. 10; NACJJD, *supra* note 4, at STANDARDS 3.112, 3.113, 3.143, 3.144, 3.153, 3.154; PCLEAJ, *supra* note 4, at 27.

27. 355 F. Supp. 451 (N.D. Ind. 1972), *aff’d*, 491 F.2d 352 (7th Cir. 1974), *cert. denied*, 417 U.S. 976 (1974).

28. 355 F. Supp. at 454-55.

29. *Id.* at 455.

30. *Id.* at 457.

31. *Id.* at 456-57.

—the decision to place a juvenile in isolation must be subject to regular review of professionally competent treatment personnel, and the detained juvenile “given reasonable access to his peers and treatment staff, and a reasonable amount of reading and/or recreational material, and opportunities for daily physical exercise”,³²

—outgoing mail cannot be opened and only incoming mail in “receptacles reasonably likely to be designed to carry contraband” can be opened absent the showing of a compelling state interest;³³ and

—because of overcrowded conditions, lack of trained staff, and lack of individualized treatment programs, juveniles confined in the Indiana Boys School had been denied the right to treatment to which they are entitled under the laws of the State of Indiana and the federal Constitution.³⁴

In affirming the district court’s decision, the Court of Appeals for the Seventh Circuit observed:

When a State assumes the place of a juvenile’s parents, it assumes as well the parental duties, and its treatment of its juveniles should, so far as can be reasonably required, be what proper parental care would provide. Without a program of individual treatment the result may be that the juveniles will not be rehabilitated, but warehoused, and that at the termination of detention they will likely be incapable of taking their proper places in free society; their interests and those of the state and school thereby being defeated.³⁵

In *Martarella v. Kelley*,³⁶ the District Court for the Southern District of New York ordered the closing of a detention facility housing girls pending adjudication or implementation of a dispositional order because the physical conditions of the facility violated the residents’ eighth amendment rights. It declared further that at a facility for boys

the shortage of key staff members . . . , their lack of training, the poor communication among them, the shortage of information available about the child to those who treat him [in addition to other deficiencies] . . . results in a failure to provide adequate treatment for the long term detainee.³⁷

Citing *Jackson v. Indiana*³⁸ and other cases indicating that due process requires that the nature and duration of commitment must bear “some reasonable relation to the purpose for which the individual is committed,”³⁹ the court in *Martarella* held that with regard to long-term detainees, the New York boys’ facility violated the fourteenth amendment right to due process as well as the developing constitutional doctrine of a right to treatment.⁴⁰

32. *Id.* at 456.

33. *Id.* at 458.

34. *Id.* at 458-59.

35. 491 F.2d at 360.

36. 349 F. Supp. 565 (S.D.N.Y. 1972).

37. *Id.* at 601.

38. 406 U.S. 715 (1972).

39. *Id.* at 738.

40. 349 F. Supp. at 602-03.

In *Morales v. Turman*,⁴¹ after examining the diagnostic, educational, medical, mental health, disciplinary, and other treatment programs of the training schools operated by the Texas Youth Council, the district court, in a sweeping, highly detailed decision, ordered the closing of two training schools as "places where the delivery of effective rehabilitative treatment is impossible."⁴² In addition, the court ordered that

[w]ithin a reasonable period, making allowance for careful planning but not for foot-dragging, the defendants must cease to institutionalize any juveniles except those who are found by a responsible professional assessment to be unsuited for any less restrictive, alternative form of rehabilitative treatment. Additionally, the defendants must within the same period create or discover a system of community-based treatment alternatives adequate to serve the needs of those juveniles for whom the institution is not appropriate. Those juveniles for whom close institutional confinement is necessary must *actually* be treated. They may not be abandoned as hopeless and simply warehoused until they grow too old for juvenile facilities. In particular, those *few* juveniles for whom close confinement is appropriate must be surrounded by a staff trained to meet their special needs, in a virtually one-to-one ratio. In this era, when it is common for teams of medical personnel and allied specialists and technicians closely to monitor critically ill patients in intensive care units in hospitals, it is not too much to expect that children whose entire lives may be blighted if they do not receive adequate treatment and help should be the objects of individual attention. It would be ironic indeed if the law may require that every juvenile prior to incarceration be aided by a lawyer devoted to the fierce protection of his individual rights, yet may consign the child *after* incarceration to the status of a cipher, lost among hundreds of other children.⁴³

Minimum levels of improvement for each of the areas noted above were specified in the opinion,⁴⁴ and the relief order enjoined, *inter alia*, "the widespread practice of beating, slapping, kicking, and otherwise physically abusing juveniles in the absence of any exigent circumstances. . . ."⁴⁵

On appeal, the *Morales* decision was initially vacated and remanded by the Court of Appeals for the Fifth Circuit for failure to convene a three-judge panel.⁴⁶ Certiorari was granted by the Supreme Court and the

41. 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded* 430 U.S. 322 (1977), *remanded for further hearings* 562 F.2d 993 (5th Cir. 1977).

42. 383 F. Supp. at 121. The court stated that measured by the "evolving standards of decency that mark the progress of maturing society." . . . the confinement of juveniles in a facility that compares unfavorably with one of the most notorious prisons in America is shocking and senseless. In addition to violating their inmates' eighth amendment rights, Gatesville and Mountain View prevent the provision of any meaningful treatment and thus violate the right to treatment as well. The Court finds specifically that no reforms or alterations can rescue these institutions from their historical excesses.

Id. at 122.

43. *Id.* at 125-26.

44. *Id.* at 72-120.

45. *Id.* at 77.

46. 535 F.2d 864 (5th Cir. 1976).

appellate court's decision reversed and remanded.⁴⁷ In the most recent decision in the *Morales* litigation, the court of appeals has again remanded the matter to district court to determine whether the changes initiated by the Texas Youth Council satisfy minimum constitutional standards.⁴⁸ In so doing, the court of appeals, following the arguments of Mr. Chief Justice Burger in his concurring opinion in *O'Connor v. Donaldson*,⁴⁹ questioned the existence and wisdom of a right to treatment, suggesting that most of the problems in this and other cases such as *Pena v. New York State Division for Youth*⁵⁰ were covered by the eighth amendment protection against cruel and unusual punishment.⁵¹ It also characterized district court's original order as "excessively detailed."⁵²

The *Morales* litigation has not deterred other courts from continuing the examination of juvenile detention and correctional facilities.⁵³ The conditions, practices and programs of Mississippi's Oakley Training School were carefully reviewed by the district court for the Southern District of Mississippi in *Morgan v. Sproat*⁵⁴ before it

—enjoined use of the punishment unit at the training school (the Intensive Treatment Unit) except under certain limited conditions and ordered that juveniles placed in that unit must have such amenities as transparent windows, lights, mattresses, blankets, sheets, pillows, tables, chairs, soap and towels, and, in most cases, reading materials, mail, visitors, and physical exercise and meals outside the unit;⁵⁵

—required the implementation of procedures proposed by the school's administration to assure reasonable access to counsel and the courts;⁵⁶ and

47. 430 U.S. 322 (1977).

48. 562 F.2d 993 (1977).

49. 422 U.S. 563 (1975) (Burger, C.J., concurring). In *O'Connor*, a case involving long-term confinement in a state mental hospital pursuant to a civil confinement order, the Court stated that even if the original confinement has a constitutionally adequate basis, "it could not constitutionally continue after that basis no longer existed. . . . A finding of 'mental illness' alone cannot justify a State's locking a person up against his will and keeping him indefinitely in simple custodial confinement." *Id.* at 575. In a concurring opinion, the Chief Justice criticized the Fifth Circuit's use of the right to treatment doctrine. *Id.* at 578-89. However, he specifically distinguished *O'Connor* from such cases as *Robinson v. California*, 370 U.S. 660 (1962), on the grounds that there was no evidence or finding that Donaldson was abused or mistreated, that failure to provide treatment aggravated his condition, or that the general quality of life at the hospital resulted in the confinement becoming " 'punishment' for being mentally ill." *Id.* at 588 n.9. This distinction may have important implications in future cases involving the confinement of delinquent juveniles, particularly when status offenses, neglect, and abuse are involved. See *Pena v. New York State Div. for Youth*, 419 F. Supp. 203, 207 (S.D.N.Y. 1976).

50. 419 F. Supp. 203 (S.D.N.Y. 1976).

51. 562 F.2d at 998-99. See also *Lollis v. New York State Dep't of Social Serv.*, 322 F. Supp. 473 (S.D.N.Y. 1970).

52. 562 F.2d at 999.

53. E.g., *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977).

54. 432 F. Supp. 1130 (S.D. Miss. 1977).

55. *Id.* at 1140.

56. *Id.* at 1159.

—mandated the development and submission of a plan to improve the living conditions, staff size and training, counseling, and educational and recreational programs at the school so as to meet the “fundamental conditions in an institution which will allow adequate treatment to take place,” and thus protect juveniles against cruel and unusual punishment and denial of their right to treatment.⁵⁷

The apparent uncertainty over the right to treatment has not prevented the various national standards-setting groups from directing considerable attention to detention and dispositional policies affecting juveniles and to the conditions, staff, and programs available in facilities in which young people are placed pending or following adjudication by the juvenile court. Six of the volumes of standards recommended by the IJA-ABA Joint Commission are totally devoted to this area,⁵⁸ and at least three others address it in part.⁵⁹ These recommendations include detailed criteria on decisions to place and hold juveniles in custody,⁶⁰ suggested maximum lengths for dispositions in delinquency cases based on the seriousness of the offense,⁶¹ an outline for a state department of juvenile corrections,⁶² and design characteristics, procedures, minimum staffing levels, and programs for residential facilities.⁶³

The Report of the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention covers the same topics in less detail.⁶⁴ The Report of the National Advisory Committee on Juvenile Justice and Delinquency Prevention proposes, in addition to criteria for detention and dispositional decisions, highly specific standards for the staff and services which should be available in training schools, and somewhat more general criteria for the staff and services which should be provided in camps, ranches, group homes, foster homes, and detention centers.⁶⁵ The rights of juveniles subject to supervision by a juvenile justice agency, and the procedures which should apply to the revocation of probation, the

57. *Id.* at 1140-57.

58. IJA-ABA STANDARDS, INTERIM STATUS, *supra* note 4; IJA-ABA STANDARDS, POSITIONS, *supra* note 4; IJA-ABA STANDARDS, DISPOSITIONAL PROCEDURES, *supra* note 4; IJA-ABA STANDARDS, THE JUVENILE PROBATION FUNCTION, *supra* note 4; IJA-ABA STANDARDS, CORRECTIONS ADMINISTRATION, *supra* note 4; IJA-ABA STANDARDS, ARCHITECTURE OF FACILITIES, *supra* note 4.

59. IJA-ABA STANDARDS, JUVENILE DELINQUENCY AND SANCTIONS, *supra* note 4; STANDARDS 5.1-6; IJA-ABA STANDARDS, NONCRIMINAL MISBEHAVIOR, STANDARD 2.105; IJA-ABA STANDARDS, ABUSE AND NEGLECT, *supra* note 4, STANDARDS 4.1-4.4, 6.1-7.5.

60. IJA-ABA STANDARDS, INTERIM STATUS, *supra* note 4, STANDARDS 3.1-3.6, 5.6, 6.6, 7.6; IJA-ABA STANDARDS, DISPOSITIONS, *supra* note 4, STANDARD 2.1.

61. IJA-ABA STANDARDS, JUVENILE DELINQUENCY AND SANCTIONS, *supra* note 4, STANDARDS 5.1-6.4.

62. IJA-ABA STANDARDS, CORRECTIONS ADMINISTRATION, *supra* note 4, STANDARDS 2.1-3.6, 9.1-9.4.

63. IJA-ABA STANDARDS, ARCHITECTURE, *supra* note 4, IJA-ABA STANDARDS, CORRECTIONS ADMINISTRATION, *supra* note 4, STANDARDS 4.1-8.9, 9.2.

64. NACCJSG, *supra* note 4, STANDARDS 12.7-12.12, 14.1-14.32, 19.1-24.6.

65. *Id.* STANDARDS 4.21-4.27.

transfer to more secure facilities, and the use of mechanical restraints are also discussed.⁶⁶ Each of these groups place strong emphasis on the use of the least restrictive alternative and the utilization of community-based services.⁶⁷

C. *Deinstitutionalization of Non-Offenders*

Much concern has been voiced over the current response to juveniles who absent themselves from home or school, who are at odds with their parents, or who have been neglected or abused. Calls for changes in this area draw on themes described in both the juvenile court and treatment areas. Although a few cases have addressed the issue of what type of out-of-home placements are appropriate for alleged and adjudicated non-offenders,⁶⁸ the most significant calls for change have come from the Congress and a variety of citizen and professional groups. In 1967, the President's Commission on Law Enforcement and the Administration of Justice raised blunt questions regarding the wisdom and efficacy of coercive intervention and incarceration for noncriminal misbehavior.⁶⁹ In 1972 and 1973, the Subcommittee to Investigate Juvenile Delinquency of the Senate Judiciary Committee held, under the chairmanship of Senator Birch Bayh of Indiana, extensive hearings on the problems of juvenile delinquency and runaways and the federal, state, and local responses to these problems. Those hearings drew testimony from a number of individuals and organizations regarding incarceration conditions and practices, focusing particularly on juveniles held because of conduct which would not be a crime if committed by an adult. Included among the witnesses were a number of young people who testified about conditions and practices in jails and in detention and correctional facilities from first-hand experience.⁷⁰ As reported by the Judiciary Committee,

[a] clear consensus emerged from the hearings supporting strong incentives for State and local governments to develop community-based programs and services as alternatives to traditional processing. This approach was felt to be particularly advantageous to non-criminal status offenders and neglected or dependent children.

. . . Evidence was presented regarding flagrant mistreatment of juvenile offenders, brutal incarceration of non-criminal offenders and the ineffec-

66. *Id.* STANDARDS 2.231-2.233, 2.33, 3.151-3.158, 3.181-3.1813, 4.31-4.82.

67. In addition, a self-examination of the juvenile corrections field is now underway under the auspices of the Commission on Accreditation of the American Correctional Association.

68. See, e.g., *In re Ellery C.*, 32 N.Y. 2d 588, 300 N.E.2d 424, 347 N.Y.S. 2d 51 (1973); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976). See also *Blondheim v. State*, 84 Wash. 2d 874, 529 P.2d 1096 (1975).

69. PCLEAJ, *supra* note 4, at 27.

70. THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT—S. 3148 AND S. 821: HEARINGS BEFORE THE SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY OF THE COMM. ON THE JUDICIARY, UNITED STATES SENATE, 92d Cong., 2d Sess., 93d Cong., 1st Sess. (1972-1973); THE DETENTION AND JAILING OF JUVENILES: HEARINGS BEFORE THE SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY OF THE COMM. ON THE JUDICIARY, UNITED STATES SENATE, 93d Cong., 1st Sess. (1973).

tiveness which had marked a grossly inadequate Federal approach to the prevention of juvenile delinquency.⁷¹

The Congressional deliberations culminated in the passage of the Juvenile Justice and Delinquency Prevention Act of 1974,⁷² which was signed into law on September 7, 1974. A primary purpose of this legislation was to stimulate the development of alternatives to traditional facilities and practices in order to fill the gap between ignoring the needs of troubled youths and continued reliance on incarceration.⁷³ As amended in 1977,⁷⁴ the Act provides, *inter alia*, for formula grant funds to states that agree to remove those juveniles presently held in correctional and detentional facilities "who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children. . . ."⁷⁵ States accepting formula grant money must also provide that juveniles alleged or found to be delinquents, status offenders, or non-offenders cannot be detained or confined in any institution in which they have "regular contact" with incarcerated adults accused or convicted of committing a crime.⁷⁶ The Act further provides for coordination of federal juvenile justice and delinquency prevention programs, for research, for technical assistance, and for training to provide alternatives to incarceration and to protect the rights of young people.⁷⁷

Joining in this nonpartisan call for removing non-offenders from training schools, detention centers, and other detention and corrections facilities, and in some instances urging the removal or substantial limitation of the jurisdiction of juvenile and family courts over status offenses, are many diverse national groups. These include the American Legion, the International Association of Chiefs of Police, the National Association of Counties, the National Council on Crime and Delinquency,⁷⁸ and the American Civil Liberties Union.⁷⁹

71. STAFF OF SENATE COMM. ON THE JUDICIARY, 95th Cong., 1st Sess., REPORT ON S. 1021 (1977).

72. 42 U.S.C. § 5601 (Supp. V 1975) (amended 1977).

73.

The act was designed to prevent appropriate young people from entering our failing juvenile system. It is designed to assist communities in developing more sensible and economic approaches for youngsters already in the juvenile system. . . . Under its provisions the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice must assist those public and private agencies who use prevention methods in dealing with juvenile offenders to help assure that those youth who should be incarcerated are jailed and that the thousands of youth who have committed no criminal act—status offenders, such as runaways—are not jailed, but dealt with in a healthy and more appropriate manner.

123 CONG. REC. S12988 (daily ed. July 28, 1977) (remarks of Sen. Bayh).

74. Juvenile Justice Amendments of 1977, Pub. L. No. 95-115, 91 Stat. 1048 (1977) (amending 42 U.S.C. § 5601 (Supp. V 1975)).

75. 42 U.S.C.A. § 5633(a), 10(H), (12)-(14) (West Supp. 1978).

76. *Id.* § 5633(a)(13).

77. See, e.g., 42 U.S.C.A. §§ 5614, 5618, 5634-39, 5651-61, 5711 (West 1977 & Supp. 1978).

78. See generally authorities cited at note 2 *supra*.

79. See also THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT—S.3148 AND S.821:

III. CALLS FOR CHANGE—A STATE PERSPECTIVE

In addition to judicial review of the juvenile justice process, the work of Congress and the work of groups and commissions with a national constituency, a number of states have embarked on reexaminations of their methods for dealing with troubled and troubling youth. Notable examples of such efforts are the report of the Juvenile Justice Task Force appointed by Ohio Attorney General William J. Brown, the juvenile justice standards and goals reports prepared for the Wisconsin Council on Criminal Justice, and the report of the New Jersey Governor's Adult and Juvenile Justice Advisory Committee.⁸⁰

Ohio's efforts in this area are exemplary and worth examining in some detail. The Ohio Juvenile Justice Task Force was formed to undertake "the first comprehensive review of juvenile corrections reform in Ohio in half a century . . . [and] to review . . . [Ohio's] 25-year-old juvenile code, . . . [its] 75-year-old juvenile court system, and . . . [its] 120-year-old state reform school system."⁸¹ The Task Force set three objectives for its work:

- (1) making the system more useful, and more beneficial to, the children it serves;
- (2) making the system less wasteful, and more accountable, for the use of public resources;
- (3) making the system as equitable as possible, less arbitrary, and less discriminatory.⁸²

In seeking to achieve these objectives the Ohio Task Force addressed each of the sets of issues discussed in the previous section.

A. Procedures

In the area of juvenile court procedures, the Task Force stated that "the best interests of all people are served by assurance of the fullest extension of *due process* of law to children at all stages of the entire juvenile justice process," and urged a "comprehensive and badly needed

HEARINGS BEFORE THE SUBCOMM. TO INVESTIGATE JUVENILE DELINQUENCY OF THE COMM. ON THE JUDICIARY, UNITED STATES SENATE, 92d Cong., 2d Sess., 93d Cong., 1st Sess. 448-49 (1972-1973) (supplementary statement of Flora Rothman, National Board of National Council of Jewish Women); NATIONAL BOARD OF THE NATIONAL ALLIANCE FOR SAFER CITIES, JURISDICTION OVER STATUS OFFENSES SHOULD BE REMOVED FROM THE JUVENILE COURT (1975); IJA-ABA, STANDARDS, NONCRIMINAL MISBEHAVIOR, *supra* note 4; NACCJSG, *supra* note 4, STANDARDS 12.8, 14.23; NACJJD, *supra* note 4, STANDARDS, 2.232, 3.153, 3.182, 3.1881, 4.21, 4.24, 4.26; NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, CORRECTIONS 574 (1973); WHITE HOUSE CONFERENCE ON CHILDREN 382. *But see* NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, 1977 RESOLUTION (1977).

80. *See* authorities cited at note 4 *supra*; *see also* MICHIGAN ADVISORY COMM'N ON CRIMINAL JUSTICE, 2 CRIMINAL JUSTICE GOALS AND STANDARDS FOR THE STATE OF MICHIGAN (1975); GOVERNOR'S COUNCIL ON CRIMINAL JUSTICE PLANNING, 2 NEW MEXICO STANDARDS AND GOALS: RECOMMENDATIONS FOR THE CRIMINAL JUSTICE SYSTEM (1977).

81. OHIO TASK FORCE REPORT, *supra* note 4, at iv.

82. *Id.* at 2.

revision" of the statutes concerning governing juvenile court records to protect against their unwarranted disclosure and misuse.⁸³ In addition, the Task Force's Drafting Committee on Court Standardization outlined a series of specific changes in the Ohio Rules of Juvenile Procedure and Ohio Revised Code to increase the consistency of the procedures employed by Ohio juvenile courts and to assure both the fairness and the appearance of fairness in Ohio's juvenile courts.⁸⁴ It stated that

[t]he most important point emerging from the purpose of juvenile court as stated in Juvenile Rule 1(B) is that the juvenile court is indeed a court, and as such it is concerned with procedural regularity to secure due process for all juveniles appearing before it. Although many disciplines apart from law are found in juvenile courts more so than in other trial courts, which many times leads citizens to perceive that juvenile court is a social agency in disguise, the committee stresses that juvenile courts are based on the law.⁸⁵

B. *Corrections*

With regard to corrections, the Report advocates the closing of Ohio's Fairfield School for Boys and razing "the unsafe and unhealthy structures which have become dumping grounds for thousands of Ohio's young men over the past 100 years."⁸⁶ The money saved by closing the school is to be returned to the local governments "to help every Ohio community care for its own children as close to home as possible."⁸⁷ The Task Force urges that except for one or two small, secure institutions for the few juveniles who are truly dangerous, Ohio's correctional system should consist of small, community-based detention facilities with strong enforcement of basic, humane standards of care.⁸⁸ "We must end the astronomical waste of human resources and public dollars now spent on large state institutions

83. *Id.* at 55.

84. *Id.* at 120-40. These recommendations include: advising juveniles of their right to counsel at each step of the proceedings; limiting waiver of counsel to older juveniles and assuring that such a waiver is "knowing and intelligent"; providing counsel to all indigent children even when non-indigent parents refuse to provide counsel; allowing a juvenile rather than the court to determine whether a juvenile's court proceeding should be open or closed to the public; preparing a verbatim record of all juvenile court proceedings; requiring a written explanation, on the request of the juvenile, of the "treatment benefits" that the court believes will be derived from the disposition and an explanation of which less restrictive alternatives were considered and the reasons for their rejection; amending Rule 45 to require reference to Ohio's civil and criminal rules of procedures before local rules could be promulgated; modifying Rule 48 to require all referees to be attorneys and amending Ohio Rev. Code Ann. § 2151.16 to require that referees be assigned on a random basis unless the child requests a referee of a particular sex; interpreting Rule 4(a) to require representation for the state by local prosecuting attorneys in juvenile court proceedings, applying the rules of evidence in the Ohio Rules of Civil Procedure to juvenile proceeding; amending Rule 32 to prohibit judges from ordering or consulting a social history of a juvenile prior to adjudication; establishing procedures and criteria for intake in the Rules of Juvenile Procedures.

85. *Id.* at 121.

86. *Id.* at 19.

87. *Id.* at 20.

88. *Id.* at 18, 51; See also L. OHLIN, A. MILLER, R. COATES, JUVENILE CORRECTIONAL REFORM IN MASSACHUSETTS (1977).

that operate as revolving doors and training grounds for criminals.”⁸⁹ Furthermore, the Task Force strongly recommends amending Ohio’s Revised Code section 2151.312 to prohibit placement of juveniles in county jails. It proposes the use of alternatives as well as development of “decent places of detention and genuine community services.”⁹⁰

C. *Deinstitutionalization of Non-Offenders*

Finally, after observing that Ohio’s existing “unruly child” law⁹¹ is a “‘catch-all’ . . . for almost all behaviors of which a particular family or particular court may disapprove,”⁹² the Task Force states:

Few conflicts between children and parents or between children and schools should be brought before the court. Most are better resolved through counseling, alternative learning arrangements and social service agencies, while the jurisdiction of the court must be only a last resort, when all else has been tried.

Therefore, it is recommended that Section 2151.022 of the Ohio Revised Code be substantially revised and reduced to include only a few specific behaviors within the definition of “unruly.”

Specifically the statute should be limited to habitual school truancy, habitual home truancy such as running away, and to a reference to those other sections of the code containing specific prohibitions applicable only to children.⁹³

To this end, the Task Force proposed changes to the Ohio Revised Code and current policy, which would, among other things,

- give the court in personam jurisdiction over parents in status offense cases;
- provide for emancipation of minors at age sixteen providing certain conditions are met;
- encourage the development of alternative learning arrangements and counseling;
- hold schools accountable for the “vast numbers of youth expelled or suspended”;
- “coordinate and support adequate childcare and youth services in every Ohio community and encourage their use . . .”;
- and prohibit placement of accused or adjudicated status offenders in jails or juvenile correctional facilities, and, in addition, the placement of pregnant, physically impaired or mentally ill juveniles in detention facilities.⁹⁴

The Wisconsin and New Jersey standards and goals present even more detailed blueprints than does Ohio for modifying their respective

89. *Id.* at 20.

90. *Id.* at 50-51.

91. *Id.* at 37. See OHIO REV. CODE ANN. §§ 2151.022, 2151.354 (Page 1976).

92. OHIO TASK FORCE REPORT, *supra* note 4, at 37.

93. *Id.* at 37.

94. *Id.* at 37-53.

juvenile justice systems. Hopefully, these proposals will assure that young people receive the due process rights to which they are entitled,⁹⁵ and that the treatment rehabilitation philosophy underlying a separate juvenile justice system does not become simply empty rhetoric masking the same kind of punishment meted out to adult offenders.⁹⁶

IV. THE RESPONSE

As a result of these clarions for change and the public concern over crimes committed by young people,⁹⁷ many legislatures across the country have amended or totally revised their states' juvenile codes.⁹⁸ Several more are now in the process of doing so.

In the judicial procedure area, several of these new or substantially amended codes apply the rules of evidence applicable in adult criminal matters to delinquency and other juvenile court proceedings,⁹⁹ and spell out more clearly the right to counsel and other due process guarantees applicable in juvenile court cases.¹⁰⁰

The corrections/treatment area appears to have received less detailed legislative attention. Several states, most notably Washington, have enacted provisions to guide or limit judicial discretion in making dispositional decisions in delinquency cases¹⁰¹ or have included punish-

95. *E.g.*, WISCONSIN COUNCIL ON CRIMINAL JUSTICE, *supra* note 4, at 6-9, 43, 77-88; GOVERNOR'S ADULT AND JUVENILE JUSTICE ADVISORY COMMITTEE, *supra* note 4, at 774-89, 794-804.

96. With regard to corrections and treatment, *see, e.g.*, WISCONSIN COUNCIL ON CRIMINAL JUSTICE, *supra* note 4, at 5-6, 50-59, 93-111; GOVERNOR'S ADULT AND JUVENILE JUSTICE ADVISORY COMMITTEE, *supra* note 4, at 735-73, 805-86.

97. Of the nearly 8 million arrests during 1976 which are reflected in the F.B.I.'s Uniform Crime Report for that year, 24.9% involved persons under age 18. The peak age for arrests for property crimes—*i.e.*, burglary, larceny, theft, and motor vehicle theft—was 16 and the peak age for violent crime—*i.e.*, murder, forcible rape, robbery and aggravated assault—was 18. C. KELLY, CRIME IN THE UNITED STATES: 1976, at 181 (1977). However, over one-fifth of all the arrests involving juveniles were for running away, curfew and loitering violations, vagrancy, liquor law violations or drunkenness, or were in connection with neglect, abuse, or other "offenses against the family and children." *Id.* at 181, 303. Moreover, as noted in the REPORT OF THE OHIO JUVENILE JUSTICE TASK FORCE, *supra* note 4, at 24, the statistics on arrests may reflect the greater likelihood of apprehension for juveniles, rather than their greater involvement in crime. *See also* M. WOLFGANG, R. FIGLIO, T. SELLIN, DELINQUENCY IN A BIRTH COHORT 88-89 (1972).

98. *E.g.*, California Assembly Bill 3121, Statutes of 1976, ch. 1071, (1976); 15 ME. REV. STAT. ANN. pt. 6 (Supp. 1978); LAWS OF UTAH 1977, ch. 76 (1977); VA. ACTS 1977, ch. 559 (1977); Wash. 3d Subst. H.B. 371, 45th Legis., 1st Sess. (1977); W. Va. H.B. 1537 (1978).

99. *E.g.*, CAL. WELF. & INST. CODE § 701 (Supp. 1977); 15 ME. REV. STAT. ANN. § 3307 (1977); W. Va. H.B. 1537, § 49-5-1 (1978).

100. Wash. 3d Subst. H.B. 371, *supra* note 98, §§ 37, 62(6), 68(2)-(3) (right to counsel in dependency and delinquency proceedings including during diversion negotiations), §§ 62(4)-(10) (in delinquency proceedings right of all parties to have subpoenas issued, verbatim transcription of all proceedings, presumption in favor of open proceedings, adequate notice, discovery to the extent permitted in criminal proceedings, opportunity to be heard and to confront witnesses, findings by an unbiased fact-finder based on the evidence presented at the hearing, privilege against self-incrimination, exclusion of statements or evidence obtained in violation of the Constitution, requirement that all waivers must be intelligent and informed); 15 ME. REV. STAT. ANN. § 3301 *See also* 18 U.S.C.A. §§ 5031-5038 (1977).

101. Wash. 3d Subst. H.B. 371 *supra* note 98, §§ 57, 69, 70. *See also* 15 ME. REV. STAT. ANN. § 3313 (1977); 18 U.S.C.A. §§ 5034, 5037 (1977).

ment and public safety among the purposes of the juvenile justice system.¹⁰² On the other hand, some statutes provide for added alternatives to detention or post-adjudication incarceration, demonstrating once again the effort to promote the equity of the juvenile justice system without undercutting its *raison d'être*.¹⁰³ In addition, a 1977 amendment to the West Virginia Juvenile Code sets forth a detailed bill of rights for incarcerated young people.¹⁰⁴

What is probably the most significant activity has occurred in relation to the handling of status offenders. Maine has virtually eliminated court jurisdiction over status offenses, placing responsibility for handling family conflicts and school problems on the family, the schools, and government services.¹⁰⁵ Runaways may be taken into interim care by law enforcement officer and may be held involuntarily for no more than six hours.¹⁰⁶ A juvenile taken into interim care can be held only in a shelter care facility, foster home, or group home, and then, and only then, "if no other appropriate placement is available, in the public sections of a jail or other secure correctional facility if there is adequate staff to supervise the juvenile's activities at all times."¹⁰⁷ Utah now requires that cases involving runaways or children beyond the control of their parents or school be referred first to the division of family services. Only if "earnest and persistent efforts" have failed can the matter be referred to the juvenile court.¹⁰⁸ It is unclear, however, what impact, if any, this amendment has on the provisions governing detention and disposition.¹⁰⁹ Virginia and Washington have barred or substantially limited the placement of status offenders in jails, detention or correctional facilities.¹¹⁰

In addition to this legislative action, all but five states have agreed to

102. CAL. WELF. & INST. CODE § 502(a) (Supp. 1977); Wash. 3d Subst. H.B. 371, *supra* note 98, § 55(d), (g); 15 ME. REV. STAT. ANN. § 3002(c)(1977). CAL. WELF. & INST. CODE § 707 (Supp. 1977); W. Va. H.B. 1537, *supra* note 98, § 49-5-1(a) (making it easier to prosecute juveniles as adults).

103. CAL. WELF. & INST. CODE §§ 654, 731 (Supp. 1977); 15 ME. REV. STAT. ANN. § 3314; 34 ME. REV. STAT. ANN. § 261 (1977); Wash. 3d Subst. H.B. 371, *supra* note 94, § 73(1). *See also* 18 U.S.C.A. §§ 5035, 5039.

104. 14 W. VA. CODE § 49-5-16(b) (Supp. 1977).

105. 15 ME. REV. STAT. ANN. § 3103 (1977) does not include in the definition of juvenile crime any conduct which would not be a criminal offense for an adult, except possession of liquor. Sections 3501-3508 present alternative means for caring for runaways under the aegis of the Department of Human Services. Runaway cases can be brought before the juvenile court in the form of a neglect petition only if no living arrangement can be agreed upon by a juvenile and the juvenile's parents, or in the form of an emancipation petition if the juvenile is age 16 or older and meets the criteria set out in the statute. 20 ME. REV. STAT. ANN. §§ 911, 914, 966, 3748 (1977) provide for the establishment of alternative educational programs for habitual truants. 22 ME. REV. STAT. ANN. §§ 3701-3704, 3803, 3891-3898 (1977) provide for family crisis workers and short term emergency services.

106. 15 ME. REV. STAT. ANN. § 3501(1)-(2) (1977).

107. *Id.* §§ 3501(7)(B), 3502.

108. 9A UTAH CODE ANN. § 78-3a-16.5 (1977).

109. *Id.* §§ 78-3a-30, 78-3a-39; COST AND SERVICE IMPACTS OF DEINSTITUTIONALIZATION OF STATUS OFFENDERS IN TEN STATES: "RESPONSES TO ANGRY YOUTH" 48 (1977).

110. CAL. WELF. & INST. CODE § 507(b)(1977); VA. CODE §§ 16.1-246, 16.1-249 (19). *But see* § 16.1-279; Wash. 3d Subst. H.B. *supra* note 94, at §§ 34, 42.

the conditions set by Juvenile Justice and Delinquency Prevention Act of 1974, as amended, for participation in the formula grant program established by that Act. The Office of Juvenile Justice and Delinquency Prevention is supporting and preparing a number of discretionary grant programs to encourage and provide incentives for the deinstitutionalization of young people, and the use of alternatives to incarceration, and the protection of the rights of juveniles.

V. CONCLUSION

It is apparent from the above discussion that the methods through which we as a nation respond to children in trouble—those who victimize society and those who are victims of it—are undergoing the most substantial change since the concept of the juvenile court swept across the country during the first decades of this century. Change does not necessarily mean improvement. Nevertheless, with our increased awareness of past mistakes and unfounded hopes, and with the greater participation of young people—the consumers of the juvenile justice system—in the decision-making processes,¹¹¹ there is a genuine opportunity to assure that American youth is treated fairly, equitably, and with the respect to which it is entitled.

111. *E.g.*, 42 U.S.C.A. §§ 5617(c), 5633(a)(3) (Supp. V 1975).